

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

COLLEGENET, INC., a Delaware
corporation,

CV 03-1229-BR

Plaintiffs

ORDER

v.

XAP CORPORATION, a Delaware
corporation,

Defendant.

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BROWN, Judge.

On October 29, 2004, Magistrate Judge Dennis James Hubel issued Findings and Recommendation (#126) regarding construction of United States Patent No. 6,345,278 B1 (the '278 patent) and United States Patent No. 6,460,042 (the '042 patent). Magistrate Judge Hubel recommended constructions for at least 36 terms disputed by the parties, recommended several terms did not require construction, and recommended the steps in claim 1 of the '278 patent and the steps in claim 16 of the '042 patent must be performed in the order recited. Both Plaintiff and Defendant filed timely objections to the Findings and Recommendation. This matter is now before this Court pursuant to 28 U.S.C.

§ 636(b)(1)(A) and Fed. R. Civ. P. 72(a).¹

When any party timely objects to any portion of the Magistrate Judge's order on a nondispositive matter, the district court must consider such objections and "modify or set aside any portion of the magistrate judge's order found to be clearly erroneous or contrary to law." Fed. R. Civ. P. 72(a).

In addition to his work in this case, Magistrate Judge Hubel presided over the adjudication of two earlier cases that involved these same two patents and construed some of the same claim terms. The Magistrate Judge issued his Findings and Recommendation in this matter after thorough briefing by the parties. On September 9, 2004, the Magistrate Judge also conducted a claim-construction hearing pursuant to *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 976 (Fed. Cir. 1995)(*en banc*), *aff'd* 517 U.S. 370 (1996). After considering the parties' proposed constructions of the disputed terms, the Magistrate Judge rendered a detailed analysis of the issues presented. The Court has reviewed the parties' objections and finds the Magistrate Judge's claim construction recommendations are neither clearly erroneous nor contrary to law. Accordingly, the Court adopts the Magistrate Judge's Findings and Recommendation.

¹ In this case, the claim construction proceedings and Judge Hubel's resulting Findings and Recommendation did not dispose of any claim or defense. Judge Hubel's Findings and Recommendation, therefore, addresses nondispositive pretrial matters subject to review pursuant to Fed. R. Civ. P. 72(a).

CONCLUSION

The Court **ADOPTS** Magistrate Judge Hubel's Findings and Recommendation (#126) in its entirety.

IT IS SO ORDERED.

DATED this 13th day of May, 2005.

/s/ Anna J. Brown

ANNA J. BROWN
United States District Judge